IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 18947 of 2007(E)

CMA.128/2005 of II ADDL. DISTRICT COURT, TRIVANDRUM
I.A.7868/04 & I.A.7869/04 IN
OS.1533/1999 of II ADDL.M.C.,TRIVANDRUM
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PETITIONER:

JOHN HENRY, RESIDING AT PARAMBIL HOUSE, D.143/7 KAIRALI NAGAR, THIRUMALA, THIRUVANANTHAPURAM.

BY ADV. SRI.L.MOHANAN
SMT.LIGEY ANTONY
SRI.M.V.KIRAN MOHAN

RESPONDENTS:

E.MURUKAN, RESIDING AT NARAKKATTUMOODU, NEHRU JUNCTION, KAZHAKUTTOM P.O., THIRUVANANTHAPURAM.

BY ADV. SMT.SREEDEVI KYLASANATH
SRI.K.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF COMMON ORDER IN I.A.7868/04 & I.A.7869/04 DTD.30.7.05.

EXT.P2 TRUE COPY OF THE JUDGMENT IN CMA 128/05 DTD. 28.11.06 BEFORE THE DISTRICT COURT, THIRUVANANTHAPURAM.

[True copy]

P.A. to Judge.

M.N.KRISHNAN, J

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W.P.(C) No.18947 OF 2007

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Dated this the 26th day of July, 2007

JUDGMENT

This writ petition is filed to set aside the judgment passed in C.M.A.No.128 of 2005 of the II Addl.District Judge, Thiruvananthapuram. The petitioner is an Upper Division Clerk in the textbook office and the suit is filed against him for recovery of the amount. The suit was decreed ex parte on 11.3.2002 and the application for setting aside the ex parte decree was filed in 2004. The ground alleged is that he had entrusted a Lawyer, who had promised to intimate him and as he was away wandering around, he came to know about the decree only when received notice of execution and therefore prays for condoning the delay and set aside the ex parte decree. I am conscious of the fact that broad principles of natural justice require as far as possible to give an opportunity of being heard to the party and is equally well settled that such a relief cannot be granted if it is proved that there is gross negligence and grave misconduct. With this in background one has to analyse the case. It was submitted that he was wandering around and was on leave. But the certificate produced to prove

his leave from 4.9.2001 to 7.1.2002 does not help him much for the reason that they are all prior to the decree. Subsequently according to him, he was wandering around and that was the reason he could not conduct the case. It has to be stated that one of the Lawyers, who appeared for him was examined before the court below and it is deposed that after January, 2001 the petitioner did not come to him at all. Engagement was given to Adv.Sri.Gireesh P.Raja with the knowledge of the petitioner. The petitioner did not make any attempt at all to contact the said Advocate or to find out about the progress of the case. So the evidence of PW2 would cut at the root of the case of the petitioner. When a suit is instituted against a person, at least courtesy demands to contact the Lawyer to find out what was happened to the litigation. One cannot go around the whole of India, come back after few years and say that since I was wandering around, the ex parte decree against him be set aside. The petitioner is a responsible officer of the Government book depot holding the rank of an Upper Division Clerk. So merely his statement is not sufficient to condone the delay when especially it is inordinate. Further, under Article 227 of the Constitution of India, this court is only expected to look into the question whether the court below had decided the case correctly and this court cannot reappreciate the materials again and again.

Therefore I find that the judgment passed by the court below do not suffer from any infirmity and therefore the writ petition lacks merit and the same is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-